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available in which to secure an introduction to present-day world history, and it is gratifying to Americans to learn that steps are already being taken to insure the appearance of an English translation. The book has a good index, but it lacks the maps and bibliographies which are to be found in the better American manuals covering this period.

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Freedom of Speech. By ZECHARIAH CHAFEE, JR. New York, Harcourt, Brace and Howe, 1920, vii, 431 pp.

During the progress of the World War after 1917 many liberal Americans, who were both desirous of securing a decisive defeat of the German military autocracy and actively engaged in helping along that laudable effort, felt many misgivings lest the chief result of the war for this country be a great set-back for American liberalism and our war to establish democracy in Germany should end by the lessening of democracy in this country. The history of the last four years, from the first cases under the Espionage Act of 1917 to the present "Open Shop" campaign, has confirmed some of their worst fears.

This book by Professor Chafee, is the most significant documentary proof of the war against liberalism which was carried on in this country under the guise of stamping out pro-Germanism and war obstruction. In many ways it is the most striking book which has been produced by an American writer on any phase of the war. The reading of this work should be preceded by a perusal of Professor Horace M. Kallen's masterly article on "the Psychology of the War in America" (*Encyclopedia Americana*, vol. 28, pp. 655-8) which gives an incisive analysis of the general pattern of national and class behavior which produced the material out of which Professor Chafee was able to construct his book. While it is entitled *Freedom of Speech*, it contains much material on other phases of constitutional liberty and its abrogation during the war, including the inroads on the freedom of the press, public assembly, party membership, and education. The author first considers the general problem of the freedom of speech in wartime. He then analyzes the Espionage Act of June 15, 1917 and the Sedition Act of May 16, 1918. Next he describes their operation and the general breakdown of the machinery of the law in attempting to apply these acts. The case of *The United States versus Jacob Abrams*

et al is analyzed in some detail as an example of this degeneration of judicial machinery. Then he takes up the operation of the various federal and state sedition acts, especially those touching upon the "red flag," criminal anarchy, membership in radical parties, and the deportation of radicals. Finally, the book closes with an illuminating contrast of the successful struggle for political and personal liberty in England at the time of Wilkes and the failure of American efforts a century and a half later. The over-whelming indictment brought in the book is strengthened by the fact that Professor Chafee writes as an unsympathetic critic rather than as an apologist of socialism and other varieties of radicalism, and bases his book solely upon a plea for decent justice for those with whom we may not agree.

Professor Chafee wisely does not contend for unlimited freedom of speech. His excellent statement of the problem follows:-

The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion. Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must then be balanced against freedom of speech, but freedom of speech ought to weigh very heavily in the scale. The First Amendment gives binding force to this principle of political wisdom.

Especially is it true that the freedom of speech must be limited in times of great national crises like war, but, as Judge Charles F. Amidon has well stated this point, it does not follow that there can be no divergence of opinion during the conflict:

The framers of the First Amendment knew that the right to criticize might weaken the support of the government in a time of war. They appreciated the value of a united public opinion at such a time. They were men who had experienced all those things in the war of the Revolution, and yet they knew too that the republic which they were founding could not live unless the right of free speech, of freedom of the press, was maintained at such a time. They balanced these considerations and then wrote the First Amendment.

In enforcing this legislation of 1917-18 it was especially desirable that some objective test of criminal intent and responsibility should be established by the courts. This Judge Learned Hand attempted to do. He held that,

The tradition of English-speaking freedom has depended in no small part upon the merely procedural requirement that the state point with exactness to just that conduct which violates the law. It is difficult and often impossible to meet the charge that one's general *ethos* is treasonable. . . .

Political agitation, by the passions it arouses or the convictions it engenders, may in fact stimulate men to the violation of law. Detestation of existing policies is easily transformed into forcible resistance of the authority which puts them in execution, and it would be folly to disregard the causal relation between the two. Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholastic subterfuge, but a hard-bought acquisition in the fight for freedom.

Unfortunately, Judge Hand was reversed by the Circuit Court and the Supreme Court, and instead of the scientific and objective test, criminal intent and responsibility became identified with a "general bad tendency" on the part of the accused, and this soon came to mean but radical inclinations. It was ruled that the truth of the alleged obstructive utterance was wholly irrelevant in the defense of the accused.

But had the law in the cases been of the best and the criterion of the actual responsibility objective and admirable, the environment and the machinery of the execution of the law were such that injustice was inevitable. There was a general hysteria concerning alleged German plots and pro-Germanism, which even United States judges have frankly admitted never existed. The juries were especially subject to the effect of this hysteria. Chafee suggests that,

It is worth our frank consideration, whether in a country where the doctrine of indirect causation is recognized by the courts twelve small property-holders, who have been through an uninterrupted series of patriotic campaigns and are sufficiently middle-aged to be in no personal danger of compulsory military service, are fitted to decide whether there is a tendency to obstruct the draft in the writings of a pacifist, who also happens to be a socialist and in sympathy with the Russian Revolution.

Judge Amidon describes the jury trials during this period in cases in which he presided:

For the first six months after June 15, 1917, I tried war cases before jurymen who were candid, sober, intelligent business men, whom I had known for thirty years, and who under ordinary

circumstances would have had the highest respect for my declarations of law, but during that period they looked back into my eyes with the savagery of wild animals, saying by their manner, "Away with this twiddling, let us get at him!" Men believed during that period that the only verdict in a war case, which could show loyalty, was a verdict of guilty.

Many of the judges showed little more consideration than the juries for the requirements of proper judicial procedure. They made stump speeches on loyalty and economic philosophy from the bench, and not infrequently took upon themselves the function of the prosecuting attorney (see pp. 82-4, 136-8, 146-8). Standing off in pleasing contrast with the procedure of many of the federal judges was the poise, dignity and sanity of District Judges Learned and Augustus Hand, Charles F. Amidon and George W. Anderson, and of Supreme Court Justices O. W. Holmes and L. D. Brandeis. But even where the judges were judicial, the fury of the juries usually made calm consideration of the law impossible.

A large amount of data is brought forward to confirm the suspicion that the legislation and its execution were aimed at radicals more than pro-Germans. Seditious utterances of soap-box speakers heard by a few score were taken up by the daily press and disseminated among millions. Sympathy for the Bolsheviki was the chief basis for conviction and twenty year sentences in the case of *U. S. vs Abrams*. Mere membership in radical parties was often adequate to secure conviction. The conviction and long-continued imprisonment of Debs contrasts strangely with the treatment of Boy-Ed, von Papen, von Rintelen and the chief German spies. The raids on the Rand School and the ousting of the Socialist Assemblymen in New York brought down upon officials the condemnation of even the most conservative of statesmen and lawyers. Some of the most atrocious cases of injustice came *after* the Armistice of November, 1918; many as late as eighteen months thereafter. Palmer asked for more severe laws after 1918 than had existed before. The United States, of all Allied countries, has not declared an amnesty for political prisoners. Finally, no limitation was placed upon, and no criminal action was begun against certain reactionary editors who excelled any radical in bringing contempt upon the Washington War Administration. Unfortunately Professor Chafee wrote too early to include within his comments the deplorable Lusk Bills recently signed by Governor Miller of New York, after they had

been condemned by the New York Bar Association and a body of the most representative citizens of New York City who presented their protest to the governor.

It is of no small importance in compelling confidence in Professor Chafee's book that at the present time the press records an attempt to carry on a personal persecution of the author on account of his revelations, and especially because of his description of the case of the *U. S. vs Abrams*, concerning which Supreme Court Justice Holmes made the following comment:

In this case sentences of twenty years imprisonment have been imposed for the publishing of two leaflets that I believe the defendants had as much right to publish as the Government has to publish the Constitution of the United States now vainly invoked by them.

In at least an indirect way the book furnishes by implication a powerful argument against war, in that it shows how even a righteous conflict may be utilized by the forces of reaction to fasten their grip more securely upon society. This is its chief lesson to students of international relations interested in the promotion of international good-will.

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